Capital Case No. 25A698

In the

Supreme Court of the United States

FRANK A. WALLS, *Petitioner*,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *Respondents*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT

RESPONSE TO APPLICATION FOR STAY OF EXECUTION EXECUTION SCHEDULED FOR DECEMBER 18, 2025, AT 6:00 P.M.

Frank Walls, a Florida prisoner under an active death warrant with an execution scheduled for December 18, 2025, asks this Court to stay his execution for a heinous murder he committed in 1987 while it considers whether to grant certiorari. Neither of his two questions presented warrant a stay under *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983) as modified by *Bucklew v. Precythe*, 587 U.S. 119, 149-51 (2019). As thoroughly laid out in the accompanying Brief in Opposition to certiorari, Walls' questions do not merit this Court's review. This Court should deny certiorari and then deny the stay.

A stay of execution is not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). Instead, a stay is "an equitable remedy" and "equity must be sensitive to the State's strong interest in enforcing its criminal judgments without

undue interference from the federal courts." *Id*. at 584. There is a "strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay." *Nelson v. Campbell*, 541 U.S. 637, 650 (2004). Equity must also consider "an inmate's attempt at manipulation." *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992).

The People of Florida, as well as the surviving victims, "deserve better" than the "excessive" delays that now typically occur in capital cases, including this one. *Bucklew*, 587 U.S. at 149. "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill*, 547 U.S. at 584. And where, as here, federal habeas "proceedings have run their course and a mandate denying relief has issued, finality acquires an added moral dimension." *See Calderon v. Thompson*, 523 U.S. 538, 556 (1998).

Courts must "police carefully" against last-minute claims used "to interpose unjustified delay." *Bucklew*, 587 U.S. at 150. Last-minute stays of execution should be "the extreme exception, not the norm." *Barr v. Lee*, 591 U.S. 979, 981 (2020) (quoting *Bucklew*, 587 U.S. at 150 and vacating a stay of execution).

Walls must establish at least three elements to receive a stay of execution on his long-finalized sentence from this Court: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal; and (3) a likelihood of irreparable injury to the applicant in the absence of a stay. *Barefoot v. Estelle,* 463 U.S. 880, 895 (1983). This Court's opinion in *Bucklew* effectively modified this test and requires Walls to show an additional two elements: (4) that he has not

pursued relief in dilatory fashion, and (5) his underlying claims are not based on a speculative theory and simply designed to stall for time. *Bucklew*, 587 U.S. at 151 ("Federal courts can and should protect settled state judgments from undue interference by invoking their equitable powers to dismiss or curtail suits that are pursued in a dilatory fashion *or* based on speculative theories.") (Cleaned up; emphases added). Walls must establish all these elements to obtain a stay. *See Hill*, 547 U.S. at 583-84.

Initially, this Court should deny a stay, as it has before, because Walls pursued his lethal-injection claims in dilatory fashion. *See Dunn v. Price*, 587 U.S. 929, 929 (2019) (vacating a stay because the capital defendant "waited until February 2019 to file this action and submitted additional evidence today, a few hours before his scheduled execution time"); *Dunn v. Ray*, 586 U.S. 1138, 1138 (2019) (vacating a stay because the capital defendant waited "until January 28, 2019 to seek relief").

Both the Eleventh Circuit and district court found Walls unduly delayed pursuing this litigation after giving him the benefit of his proposed July 2025 triggering date despite doubting that date was right. *Walls v. Sec'y, Dep't of Corr.*, No. 25-14302, 2025 WL 3619640, at *3 (11th Cir. Dec. 13, 2025). July 2025—in which Walls asserted his claims ripened—provides the latest possible date Walls should have filed suit and supports an undue delay finding. He always had the ability to amend his suit with further evidence if it came to light later. *See Siebert v. Allen*, 506 F.3d 1047, 1048 (11th Cir. 2007) (granting a stay in a lethal-injection case with a new medical diagnosis in May 2007 and amended § 1983 complaint for an existing lethal-

injection suit filed in mid-June).

But, in reality, Walls delayed challenging Florida's lethal-injection protocol for years. His 2017 medical records show he "has suffered for at least eight years from the same conditions he now alleges will cause him severe pain and suffering." *Walls*, No. 25-14302, 2025 WL 3619640, at *3 (11th Cir. Dec. 13, 2025). He has also never explained where he obtained the ambiguous records he touts as showing protocol deviations or why he could not have obtained them sooner. In any event, the records do not provide the appropriate triggering date for a claim that Florida's protocol will cause him superadded pain in violation of the Eighth Amendment.

Any doubts about when Walls could have been filed are resolved against him on the eve of his execution. *See Sawyer v. Whitley*, 505 U.S. 333, 341 n.7 (1992) ("A court may resolve against" a last-minute capital litigant "doubts and uncertainties" on "the sufficiency of his submission."). This Court should therefore deny Walls a stay of execution because he unduly delayed filing his lethal-injection suit until after the Governor signed his death warrant. *Price*, 587 U.S. at 929; *Ray*, 586 U.S. at 1138. *Cf. Abbott v. League of United Latin Am. Citizens*, No. 25A608, 2025 WL 3484863, at *1 (U.S. Dec. 4, 2025) (invoking the caution that federal courts should not intervene close to an election over a dissent that argued the Texas Legislature bore any fault for altering an election map close to an election).

Walls' challenge to Florida's lethal-injection protocol is also speculative and thus unworthy of a stay. The only court to fully consider Florida's protocol has repeatedly held it constitutional against all manner of challenges. *E.g.*, *Rogers v.*

State, 409 So. 3d 1257, 1268 (Fla. 2025), *cert. denied*, 145 S. Ct. 2695 (2025); *Long v. State*, 271 So. 3d 946, 944 (2019); *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017). That includes court-made findings that etomidate is effective and will prevent Walls from experiencing any pain. *Asay*, 224 So. 3d at 701 ("Intravenous injection of etomidate produces hypnosis characterized by a rapid onset of action, usually within one minute."); *Rogers*, 409 So. 3d at 1268 (holding a capital defendant with an as-applied challenge failed to overcome "the well-established fact that the administration of etomidate will render him unconscious likely within one minute").

This Court should not invite a repeat of the prolonged and unnecessary litigation it condemned in *Bucklew*. There, the lethal-injection suit "carried on for five years and yielded two appeals to the Eighth Circuit, two 11th-hour stays of execution, and plenary consideration in this Court." *Bucklew*, 587 U.S. at 149. "And despite all" that, the suit amounted "to little more than an attack on settled precedent, lacking enough evidence even to survive summary judgment—and on not just one but many essential legal elements set forth in our case law and required by the Constitution's original meaning." *Id.* The lower courts correctly curtailed Walls' speculative suit as this Court instructed. *Id.* at 151. This Court should end it here and now.

Walls' § 1983 suit is little more than a speculative invitation for a lower federal court to reach a different conclusion than the Florida Supreme Court has reached many times before. This suit hinges—contrary to Walls' attempt to mask the real issue—on whether etomidate will render Walls insensate before his execution proceeds. It will. *E.g.*, *Asay*, 224 So. 3d at 701. Florida has established procedures to

make sure of that. *See Baze v. Rees*, 553 U.S. 35, 120 (2008) (Ginsburg, J., dissenting) (praising Florida's consciousness checks).

Walls' contrary, speculative position and attack on settled Florida Supreme Court precedent does not merit a stay. *See Barr v. Lee*, 591 U.S. 979, 981 (2020) (vacating a stay based on testimony that any "flash pulmonary edema" would occur after "the prisoner has died or been rendered fully insensate"). This Court should therefore deny him one. *Bucklew*, 587 U.S. at 151.

The first *Barefoot* element also weighs against Walls. Four justices would probably not vote to grant certiorari on any of Walls' questions presented for the reasons fully laid out in the accompanying Brief in Opposition to certiorari. For the first question presented, Walls conceded that he could have filed suit by July 2025 and the lower courts took him at his word despite doubts that he was right. Now, before this Court, Walls contends that two pages laying out alleged protocol deviations nestled in his thirty-eight-page complaint are the centerpiece of his case. A case with a dispositive concession, where the litigant switches his focus before this Court, is not a likely candidate for certiorari review.

Walls' first question also seeks an inherently factbound decision from this Court with little precedential value and zero actual conflict. He asks this Court to parse through facts and records to determine whether the lower courts were right as a factual matter that he unduly delayed. This Court does not generally take such cases. Sup. Ct. R. 10. And it is even less likely to do so when the only proposed shallow conflict is a superficial dissimilarity between the decision below and a twenty-year-

old Ninth Circuit case that also denied a stay. There is no true conflict. Not even a shallow one.

The numerous reasons Walls could not properly receive a stay even if this Court resolved his proposed questions in his favor make it more than unlikely this Court would grant certiorari. His medical records demonstrate, as the district court recognized, he likely failed to file suit within Florida's statute of limitations. His failure to make any attempt to engage in congressionally required exhaustion likely bars his suit under the Prisoner Litigation Reform Act. Florida preclusion law bars his § 1983 claim because it could have been, but was not, raised in his state post-warrant challenges to his execution. And he failed to allege a factually plausible and legally valid method-of-execution claim. Four justices of this Court are not likely to grant certiorari when a stay of execution was properly denied on grounds repeatedly asserted below.

Likewise, the ambiguity in the records Walls' touts as evidence of protocol deviations does not support certiorari review. The records are heavily redacted and do not, absent conjecture, speculation, and imagination, support Walls' accusation that Florida has failed to follow its protocol. Walls' reliance on these records also raises a substantial question of how he received them and whether he could have received them earlier. Given the tenuous nature of the evidence supporting Walls' refashioned § 1983 suit "centerpiece," this Court would not likely grant certiorari. *See Sawyer v. Whitley*, 505 U.S. 333, 341 n.7 (1992).

Nor is it likely this Court would grant certiorari when the Eleventh Circuit

simply and faithfully abided by this Court's precedent on undue delay after using Walls' proposed triggering date to make its assessment. His 2017 medical records demonstrate the courts below were, if anything, more generous to Walls than necessary when calculating undue delay. *See Sawyer*, 505 U.S. at 341 n.7.

Walls' second question presented yields the same answer on the first *Barefoot* element. This Court has repeatedly answered Walls' second question presented and given lower courts all the guidance they need on whether to deny stays of execution based on undue delay. *See Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025). They should. *Dunn v. Price*, 587 U.S. 929, 929 (2019); *Dunn v. Ray*, 586 U.S. 1138, 1138 (2019). *See also Nelson v. Campbell*, 541 U.S. 637, 650 (2004); *Gomez v. United States Dist. Court for Northern Dist. of Cal.*, 503 U.S. 653, 654 (1992). And lower courts have long understood that message. "After *Nelson* a number of federal courts have invoked their equitable powers to dismiss suits they saw as speculative or filed too late in the day." *Hill v. McDonough*, 547 U.S. 573, 584 (2006) (collecting cases). Four justices are unlikely to grant certiorari to re-answer Walls' second question presented, which has been answered many times before, including recently.[1]

For all these reasons, four justices would probably not vote to grant certiorari on either question Walls presents. The first *Barefoot* element therefore weighs against granting a stay.

[1] Walls' perfunctory argument that the lower courts should have granted an evidentiary hearing does not change the outcome considering both courts used his proposed date when calculating undue delay. Four justices would probably not vote to grant certiorari on whether an evidentiary hearing should be held after lower courts used the capital defendant's proposed ripening date to calculate timeliness.

On *Barefoot*'s second element, it is even more unlikely Walls would obtain reversal on either question presented. On the first, the Eleventh Circuit correctly denied his motion to stay after using the July 2025 date Walls proffered as the date he could have filed suit. But Walls' lethal-injection claims accrued far earlier, as his 2017 medical records show. A more searching inquiry by this Court would likely result in finding Walls inexcusably delayed filing suit for years despite being on notice a warrant could be signed for him at any time. *See Jones v. State*, 419 So. 3d 619, 626 (Fla. 2025) (defining "warrant-eligible" as when the denial of initial federal habeas relief has been affirmed). The so-called protocol deviations Walls refashioned before this Court into the centerpiece of his claims do not permit him to escape from the reality that his actual challenge to Florida's protocol ripened years earlier.

On the second question, this Court is unlikely to recede from its longstanding precedent that undue delay alone is sufficient to deny a stay. *See Barr v. Lee*, 591 U.S. 979 (2020) (recognizing lethal-injection claims must be resolved "fairly and expeditiously"); *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019) (recognizing this Court has repeatedly disapproved of waiting until an execution is scheduled to bring claims that could have been brought earlier). Nor is this Court likely to create a per se rule that evidentiary hearings are always required before deciding whether a capital defendant unduly delayed, particularly when his admissions establish undue delay. *See Sawyer v. Whitley*, 505 U.S. 333, 341 n.7 (1992) ("A court may resolve against" a last-minute capital litigant "doubts and uncertainties" on "the sufficiency of his submission.").

As a result, Walls fails the second *Barefoot* element as well.

That brings us to the third *Barefoot* element of irreparable harm. Since Walls' § 1983 claims do not (and could not) challenge Florida's right to execute him, the only correct focus for irreparable harm is whether he will likely suffer superadded pain in violation of the Eighth Amendment during the execution. So viewed, Walls has not met his burden to show irreparable harm. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (mere "possibility" insufficient to show irreparable harm); *Koninklijke Philips N.V. v. Thales DIS AIS USA LLC*, 39 F.4th 1377, 1380 (Fed. Cir. 2022) (explaining "mere possibility or speculation of" irreparable "harm is insufficient").

Florida has executed over thirty inmates under this protocol, which has worked quickly and efficiently each time. *Cf. Barber v. Ivey*, 143 S. Ct. 2545, 2545-46 (2023) (Sotomayor, J., dissenting) (dissenting from the Court's refusal to stay an execution despite, in two recently preceding executions, Alabama officials "spent multiple hours digging for prisoners' veins in an attempt to set IV lines" and could not carry out the execution); *Smith v. Hamm*, 144 S. Ct. 414, 414 (2024) (Sotomayor, J., dissenting) (dissenting from the Court's refusal to stay an execution despite the fact Alabama failed to execute this inmate once before and was attempting a novel nitrogen hypoxia method this time). Indeed, this Court has refused to stay an execution based on a much more novel method (nitrogen gas) where the capital defendant alleged he would suffocate for "four minutes" before being rendered unconscious, the execution would likely take "around 20 minutes from start to completion," prior executions included

"violent movements," convulsions, and a witness described a prior execution as like "watching someone drown without water." *Boyd v. Hamm*, No. 25A457, 2025 WL 2984339, at *1-5 (U.S. Oct. 23, 2025) (Sotomayor, J., dissenting from stay denial).

The massive dose of etomidate required by Florida's protocol, combined with the mandatory consciousness checks, will ensure Walls is "fully insensate" before the execution continues and any pain from pulmonary edema occurs. *Cf. Barr v. Lee*, 591 U.S. 979, 981 (2020); *Baze v. Rees*, 553 U.S. 35, 64 (2008) (Alito, J., concurring) ("The first step in the lethal injection protocols currently in use is the anesthetization of the prisoner. If this step is carried out properly, it is agreed, the prisoner will not experience pain during the remainder of the procedure."); *id.* at 120 (Ginsburg, J., dissenting) (praising Florida's consciousness checks). Notably, this Court has upheld lethal-injection protocols even without consciousness checks. *See Glossip v. Gross*, 576 U.S. 863, 877, 886 (2015). Their presence in Florida's protocol renders Walls' attempt to show irreparable harm little more than speculative.

Walls failed to establish he will be irreparably harmed by superadded pain if the status quo remains in place and Florida carries out his execution tomorrow. He therefore fails the third *Barefoot* element along with the rest.

Accordingly, this Court should deny the application for stay.

Respectfully submitted,

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